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Bureau of Special Education FY'05 Memo #15

Date: May 19, 2005

To: Superintendents of Schools
Special Education Director

From: Bureau of Special Education

Re: IDEA '04:
"Early Intervening Services" and Their Relationship to FY'06 IDEA Part-B Entitlement Funds

IDEA 2004 goes into effect July 1, 2005 and school districts must be in compliance with all of its provisions on that date.

Another major change between the earlier federal special education law and IDEA '04 is a new local school district **option** regarding use of Part B entitlement funds.

Under IDEA '04, a school district may choose to use up to 15% of its Part B entitlement funds for students who have not been identified as needing special education but who need additional academic and behavioral support to succeed in a general education environment. That is, for children who are at risk but not eligible for special education. These services are called "early intervening services."

There are specific parameters for use of these funds in this way. These are itemized in the law itself, P.L. 108-446, "Individuals with Disabilities Education Improvement Act of 2004," Part B, Section 613 (a)(2)(C), which is available on the Department of Education website under "Special Education," "Documents Available," and are described in FY '05 Special Education Memo #12, dated April 20, 2005, in the OSERS "one-pager" attached to that memo.

We draw your attention to six major features of this option:

1. amount is limited to 15% of a district's Part B funds,
2. allows commingling with ESEA funds,
3. allows use for students **not identified for special education** K through 12, with an emphasis on K-3,
4. allows specific activities,
5. has a reporting requirement by local school districts who use this option, and
6. may require district to use these funds to reduce over identification and disproportionality.

Here is the direct quote from the law regarding the 15%, commingling, and K-12 with emphasis on K-3:

A local school district may not use more than **15 percent** of the amount such agency receives under this part for any fiscal year, less any amount reduced by the agency pursuant to subsection (a)(2)(C) if **any in combination with** other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular **emphasis on students in kindergarten through grade 3**) who have not been identified as needing special education or related service but who need additional academic and behavioral support to succeed in a general education environment.

Allowable activities include:

- 1. professional development, and
- 2. the provision of educational and behavioral evaluations, **services** and support, including scientifically based literacy instruction.

Reporting: Each school district which develops and maintains coordinated, early intervening services shall annually report to the state department of education:

- A. the number of students served under “early intervening services,” and
- B. the number of students served under this provision who subsequently receive special education and related services under Part B during the preceding 2-year period.

A school district using this option will be required to provide these numbers to the Department of Education each year. The district must keep in-house records supporting the numbers by documenting which particular students are served under this option.

Commingling: Please note that funds used for this provision must **not supplant ESEA services**, but only supplement them.

Disproportionality: If a school district is found to have overidentified students as eligible for special education, or to over-use a particular educational setting, the district may be required to use these funds to address those issues.

Relationship to IDEA '06 Part B application for entitlement funds: A special “Program Page” (a variation of the usual “Page 2”) has been designated for use to apply for funds using this option. It is Page 3 in the FY '06 application. It is for use only by those districts which choose to use this option, so that the funds may be tracked. This Page 3 is not to be used or included in the application submitted by districts not using the “early intervening services” option.

If you have any questions, please contact the Bureau of Special Education.